

Exhibit 5

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----)
)
In re)
) Chapter 11
)
LEHMAN BROTHERS) Case No.
)
HOLDINGS INC., et al.,) 08-13555 (JMP)
)
) (Jointly Administered)
Debtors.)
)
)
-----)

VIDEO DEPOSITION UPON ORAL EXAMINATION
of

SIR GEORGE IACOBESCU

On Tuesday, 18th June 2013

Taken at the offices of:
Weil Gotshal & Manges LLP,
110 Fetter Lane,
London EC4A 1AY,
England

Reported by: Richard Harper

Page 17

1 SIR GEORGE IACOBESCU

2 wider than ----

3 Q. My interest was wider; I just
4 hadn't asked you yet?

5 A. Okay. Do you want to ask me or
6 should I continue?

7 Q. You should just continue.

8 A. Okay, so in 1979, I joined Olympia
9 and York in Toronto.

10 THE COURT REPORTER: I joined,
11 sorry?

12 A. Olympia and York in 1978 and,
13 practically, I work for 35 years for the same
14 company. I was -- I started as a construction
15 manager and then I became vice president of
16 developments in Battery Park and I have done for
17 Olympia and York several projects in Boston, in
18 Houston. I was in charge of the Olympia Centre
19 and the Nieman Marcus development in Chicago and
20 then I was running about 60% of the Battery Park
21 development; namely the two Merrill Lynch
22 buildings, the central plant and the Winter
23 Garden. In 1987, we were invited by Mrs. Thatcher
24 to develop Canary Wharf and I moved to London in
25 1988 with a team of executives.

Page 32

1 SIR GEORGE IACOBESCU

2 to ----

3 BY MR. ISAKOFF:

4 Q. The question is wasn't there some
5 interest being served for Canary Wharf in not
6 following the procedure specified in section 7(a)
7 in not serving, or attempting to serve a notice on
8 LBHI after the forfeiture was effective on
9 December 10, 2010?

10 MR. TULCHIN: Same objection.

11 A. Okay. Let's -- we are in December
12 2010. The rent that was due from LBHI was £57.5
13 million per year. The value of that rent was
14 approximately £1 billion 50, to make up in pounds
15 or in dollars?

16 BY MR. ISAKOFF:

17 Q. I can work with either one, sir.

18 A. So the value was about 1 billion
19 50. We were working toward a partial mitigation
20 of our loss by selling the building to JP Morgan,
21 which we had no guarantee. And I am very happy to
22 elaborate on that but we had no guarantee that
23 that would happen. Ultimately, we sold the
24 building for -- depends how you look at the
25 numbers -- between £450 million and £470 million.

1 SIR GEORGE IACOBESCU

2 CW0010443. This is the letter that's dated
3 December 3. At the bottom of the first page,
4 there is a reference to when the right will be
5 exercised to forfeit the lease. Do you see that?

6 A. Yes.

7 Q. Does this refresh your recollection
8 that forfeiture took place on December 10, 2010?

9 A. Yes, it refreshes my memory that it
10 was signed on 3rd December and yes, that is
11 correct. That is what it says.

12 Q. So having in mind that you did not
13 yet have a signed deal with JP Morgan on December
14 10, 2010, is it, in fact, the case that it would
15 have been against Canary Wharf's interest to serve
16 LBHI under paragraph 7(a) of what we have been
17 referring to as exhibit 3, because it might have
18 interfered with the pending deal with JP Morgan?

19 A. No, I do not think so.

20 Q. Would it have interfered with the
21 deal with JP Morgan if you'd served the notice
22 under 7(a)?

23 A. If we knew that there is interest
24 from LBHI, we would have served the notice. If
25 the response from -- on our questions from LBHI

1 SIR GEORGE IACOBESCU

2 are still working on it and they're building the
3 basement. The second alternative was to refurbish
4 all the offices, and keep in mind we are in a
5 collapsing world, the world was falling down
6 around us. The other alternative was to redevelop
7 and refurbish their existing offices. The third
8 one was to look for new premises and in that
9 context I asked him "Would you be interested in
10 that building? Would you take a lease on that
11 building? After a lot of thinking they said, "We
12 would consider it. We have not made a decision.
13 We'll consider it" and as you probably know
14 optionality is the Number 1 mantra of JP Morgan.
15 They always want to have optionality. One of the
16 strengths was to purchase. They said "We'll not
17 take a lease but we'll consider a purchase. That
18 is how the discussion of the purchase of the
19 building started.

20 Q. Okay. At that time, was there any
21 default in the lease with LBL?

22 A. Yes, LBL stopped paying rent, or we
23 knew -- I cannot point exactly the days, but we
24 have been told by LBL and end of March they
25 stopped paying rent. So they defaulted on that

1 SIR GEORGE IACOBESCU

2 point.

3 Q. Okay. Do you know whether the
4 discussions that you were having with JP Morgan
5 Chase concerning offering JP Morgan an interest in
6 the building or a sale of the building, whether
7 that predated the end of March?

8 A. I don't know exactly, but we knew
9 that -- can I add something to it?

10 Q. Sure.

11 A. We knew that Nomura's lease will
12 come to an end and Nomura will move out of the
13 building, because Nomura was a tenant for about
14 400,000 square feet.

15 Q. Is that 400,000 square feet?

16 A. Nomura, yes. But we knew that
17 their lease was -- we tried very, very hard to
18 make a deal with Nomura to stay there, but then we
19 realised that we were losing Nomura too, so we
20 contemplated an empty building.

21 Q. The effort to retain Nomura, did
22 you realise that that was not going to succeed
23 before or after LBL stopped paying rent at the end
24 of March 2010?

25 A. We tried -- we pretty much knew --

Page 125

1 SIR GEORGE IACOBESCU

2 two tier building, a building where the main
3 tenant has practically all the -- call it all the
4 juice of the building and all the others would
5 become second class citizens. That is why we were
6 so eager to know we have a 30 year lease and that,
7 come hell or high water, the rent will flow for 30
8 years, because we knew that that is not a building
9 that then you can chop in pieces.

10 Q. Okay. So at this point, in October
11 2010, where LBL has abandoned the building and so
12 forth, were you saying here that the fact that
13 there were no potential tenants for the entire
14 building a disadvantage, as compared with selling
15 the building as a whole?

16 A. Correct. It was -- JP Morgan was
17 the only potential customer, call it, not tenant
18 but buyer in the market that would take that kind
19 of building and since -- if I can add, since,
20 there was not a single deal of that size in the
21 whole of London and there is not a single
22 1 million square feet building in London, except
23 five or six in Canary Wharf, so that gives you --
24 this is not New York, it gives you the sizing of
25 the tenancy and customising of the buildings.

Page 239

1 SIR GEORGE IACOBESCU

2 REDIRECT BY MR. TULCHIN

3 By MR. TULCHIN:

4 Q. Mr. Iacobescu, I am going to have a
5 few questions.

6 A. Yes.

7 Q. Going back to the time when the
8 lease was entered into, the lease with LBL, what
9 did you understand, as the CEO of Canary Wharf,
10 that LBHI had agreed to do in connection with the
11 obligations of LBL in the lease?

12 MR. ISAKOFF: Objection. Calls for
13 legal conclusion.

14 BY MR. TULCHIN:

15 Q. You can go ahead and answer.

16 A. What I asked from day one, from the
17 first day that we started negotiating the deal
18 with Jeremy Isaac, who is the chief executive of
19 LBL, Frank Bartolotta, who was LBHI, and Mark
20 Marcucci, who is the global head of real estate,
21 is that we should have an absolute solid
22 guarantee, come hell or high water, that the rent
23 will flow over the next 30 years and, as a matter
24 of fact, we always thought that we are dealing
25 with LBHI. We needed -- we always asked for the

Page 240

1 SIR GEORGE IACOBESCU

2 top company, as I mentioned to Mr. Isakoff. We
3 always asked for the top company in any
4 transaction that we do. We have done the same
5 thing with Credit Suisse, or Morgan Stanley, or
6 CitiGroup, except the world headquarters of banks
7 like Barclays, where the parent company is on the
8 lease, but we always ask for an indemnity, because
9 the need is to have an uninterrupted cash flow
10 regardless of anything that goes wrong with the
11 tenant.

12 Q. I am sorry, with whom? You said,
13 "Regardless of anything that goes wrong with..."

14 A. With the tenant.

15 Q. Okay. I didn't hear you.

16 A. We were aware of the Lehmans
17 problems in 1998 with the Asian crisis, with the
18 Russian crisis, so we were a little bit
19 circumspect but it was a very, very good tenant,
20 exceptionally good tenant, and we would not have
21 entered into any, any lease agreement unless we
22 had the parent company indemnity, that they would
23 come through with. And, by the way, I do not
24 recall at any point when anybody in LBHI, be it
25 LBL or LBHI have objected to the meaning of what

Page 241

1 SIR GEORGE IACOBESCU

2 we asked for, of the indemnity.

3 Q. And you understand when the deal
4 was done that you had obtained what you were
5 seeking?

6 MR. ISAKOFF: Objection. Leading
7 and calls for a legal conclusion.

8 A. My understanding is that this is
9 what we asked, this is what we got and, as an
10 additional thing, one of the reasons that we were
11 very strict on this requirements is that because
12 the building also had to be in the securitization,
13 and a 30 years lease in the securitization, when
14 we put Lehman in the securitization, the income
15 from Lehman was matched against bonds that would
16 expire in 2033, so we would not match bonds with
17 something that we didn't think was rock solid.

18 BY MR. TULCHIN:

19 Q. I want to ask you, Mr. Iacobescu
20 please, to cast your attention to September 30th
21 2010 and you recall giving some testimony about
22 the events of that day?

23 A. Yes.

24 Q. Okay. What consequences would
25 there be, as far as you understood, for the

1 SIR GEORGE IACOBESCU

2 A. It says very clear that: "All
3 these points ... will become effective on
4 completion of surrender."

5 Q. Now, Mr. Iacobescu, a couple of
6 questions if I may, about the economics of what
7 happened in 2010. There came a point when LBL
8 stopped paying rent; is that right?

9 A. Correct.

10 Q. What is your recollection as to
11 when that was?

12 A. End of March 2010.

13 Q. As of that time, roughly speaking,
14 how many years were left on the LBL lease?

15 A. 23 years.

16 Q. What was LBL's total obligation to
17 pay rent and other charges for the duration, the
18 unexpired portion of the lease?

19 MR. ISAKOFF: Object to form.

20 BY MR. TULCHIN:

21 Q. Approximately?

22 MR. ISAKOFF: The same objection.

23 A. I cannot do the calculation
24 mentally, because it is all a matter of the rate
25 of discount, but the value of if building in 2010